

REMARKS

Claims 1 through 3, 5, 6, 8, 18 through 20, 22, 23 and 25 are currently pending in the application.

Claims 1 through 3, 6, 8, 18 through 20, 23 and 25 stand rejected.

Claims 5 and 22 are objected to.

This amendment is in response to the Office Action of February 2, 2009.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent 5,655,704 to Sakemi et al. in view of U.S. Provisional Application No. 60/078,472 to Fjelstad and further in view of U.S. Patent 4,209,893 to Dyce et al.

Claims 1 through 3, 6, 8, 18 through 20, 23 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakemi et al. (U.S. Patent 5,655,704) in view of Fjelstad (U.S. Provisional Application No. 60/078,472) and further in view of Dyce et al. (U.S. Patent 4,209,893). Applicants respectfully traverse this rejection, as hereinafter set forth.

Applicants further submit that to establish a *prima facie* case of obviousness under 35 U.S.C. § 103 three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, the Examiner must determine whether

there is “an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Further, rejections on obviousness grounds “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id* at 1741, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

Applicants have canceled independent claims 1 and 18 and amended dependent claims 2, 3, 6, 8, 19, 20, 23, and 25 to depend from dependent claims 5 and 22 that have been amended to be independent claims including the subject matter of any intervening claims from which they depended. Therefore, claims 2, 3, 5, 6, 8, 19, 20, 22, 23, and 25 are allowable.

Objections to Claims /Allowable Subject Matter

Claims 5 and 22 stand objected to as being dependent upon rejected base claims, but are indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form.

Applicants have rewritten dependent claims 5 and 22 in independent form. Therefore, claims 5 and 22 are allowable.

Applicants submit that claims 2, 3, 5, 6, 8, 19, 20, 22, 23 and 25 are clearly allowable over the cited prior art.

Applicants request the allowance of claims 2, 3, 5, 6, 8, 19, 20, 22, 23 and 25 and the case passed for issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James R. Duzan". The signature is fluid and cursive, with the first name "James" and last name "Duzan" clearly distinguishable.

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